In the Supreme Court

OF THE

United States

OCTOBER TERM, 1973

No. 72-1589

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

VIOLA N. RICHARDSON, as County Clerk and Registrar of Voters for the County of Mendocino, individually and as a representative of the class of all other County Clerks and Registrars of Voters,
Petitioner,

vs.

ADRAN RAMIREZ, LARRY GILL and ALBERT LEE, on behalf of themselves and all others similarly situated, LOS PINTOS, 7TH STEP FOUNDATION, INC. (CALIFORNIA AFFILIATES), PRISONERS' UNION, and THE LEAGUE OF WOMEN VOTERS OF CALIFORNIA, *Respondents.*

On Writ of Certiorari to the Supreme Court of the State of California

PETITIONER'S REPLY BRIEF

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Subject Index

Page

I. The special provisions of Section Two of the Fourteenth Amendment prevail over the general provisions of Section One of that same amendment, even though separately drafted 2

II. Statistics prove that over sixty per cent of the applications for rehabilitation pardons are granted 5

III. Section 350 of the California Elections Code provides adequate relief where the County Clerk fails to follow the conclusions reached in Otsuka v. Hite, 64 C.2d 596 (1966) 6

IV. Fincher v. Scott, 352 F.Supp. 117 (M.D. N.C. 1972), aff'd, 411 U.S. 961 (1973), clearly applies to persons convicted of infamous crimes that are not incarcerated 7

Table of Authorities Cited

Cases	Pages
Anderson National Bank v. Luckett, 321 U.S. 233 (1944) ..	7
Boddie v. Connecticut, 401 U.S. 371 (1971)	7
Bowles v. Willingham, 321 U.S. 503 (1944)	7
Fincher v. Scott, 352 F.Supp. 117 (M.D. N.C. 1972), aff'd, 411 U.S. 961 (1973)	7, 8, 9
Fourco Glass Co. v. Transmirra Prod. Corp., 353 U.S. 222, 1 L.Ed.2d 786 (1957)	3
Goldberg v. Kelly, 397 U.S. 254 (1970)	6
James v. Bowman, 190 U.S. 124	5
Martin v. Election Comrs., 126 Cal. 404 (58 P. 932)	2, 3

Pages

National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1, 81 L.Ed. 893 (1936) 3

Otsuka v. Hite, 64 C.2d 596 (1966) 6

People v. Western Air Lines, Inc., 42 C.2d 621 (1954) 2

Stone v. Smith, 34 N.E. 521 5

United States v. Anthony, 24 Fed. Case No. 14,459, p. 829 (C.C. N.D. N.Y. 1873) 5
United States v. Cruikshank, 92 U.S. 542 5
United States v. Reese, 92 U.S. 214, 28 L. Ed. 563 4,5

Van Valkenburg v. Brown, 43 Cal. 43 5

Codes

Elections Code, Section 350 6,7

California Penal Code:
Section 4852.14 6
Section 4852.17 6

Constitutions

United States Constitution:
Thirteenth Amendment 5
Fourteenth Amendment 3,4,5
Section 2 2,4
Fifteenth Amendment 5
Nineteenth Amendment 5
Twenty-sixth Amendment 5

Texts

16 Am.Jur.2d, Constitutional Law, Sec. 69, p. 247 4

50 Am.Jur., Statutes, Sec. 367, p. 371 4

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ABRAN RAMIREZ, LARRY GILL and ALBERT LEE, on behalf of themselves and all others similarly situated, LOS PINTOS, 7TH STEP FOUNDATION, INC. (CALIFORNIA AFFILIATES), PRISONERS' UNION, and THE LEAGUE OF WOMEN VOTERS OF CALIFORNIA, *Respondents.*

On Writ of Certiorari to the Supreme Court of the State of California

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PETITIONER'S REPLY BRIEF

I. THE SPECIAL PROVISIONS OF SECTION TWO OF THE FOURTEENTH AMENDMENT PREVAIL OVER THE GENERAL PROVISIONS OF SECTION ONE OF THAT SAME AMENDMENT, EVEN THOUGH SEPARATELY DRAFTED.

Both the California Supreme Court and the United States Supreme Court have long recognized the basic fundamental concepts of statutory and constitutional construction which both courts so frequently use to direct themselves toward a proper conclusion. As was stated by the California Supreme Court:

> "* * * special provisions control more general provisions, and the general and special provisions operate together, neither working to repeal the other. (*Martin v. Election Comrs.*, 126 Cal. 404 [58 P. 932]; 11 Cal.Jur.2d 352-353; 11 Am.Jur. 663.)"
>
> *People v. Western Air Lines, Inc.*, 42 C.2d 621, 637 (1954).

The position taken by respondents herein appears similar to that taken by the appellant in *Martin v. Election Comrs., supra.* The California Supreme Court in *Martin* stated:

> "The rule of construction invoked by appellants seems to be that a provision in a law or constitution in reference to a particular matter is inoperative and void if it be inconsistent with the general provisions of said law or constitution. The direct opposite is the true construction in such cases.
>
> " 'The more specific provision controls the general, without regard to their comparative dates; the

two acts operating together, and neither working the repeal of the other.' [Citations.]"

Martin v. Election Comrs., supra, 126 C. 404, 411 (1899).[1]

The petitioner submits that the same rules of construction have been followed by the United States Supreme Court in cases dealing with statutory interpretation. As this Court has previously stated:

"* * * We are not at liberty to deny effect to specific provisions, which congress has constitutional power to enact, by superimposing upon them inferences from general legislative declarations of an ambiguous character even if found in the same statute."

National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1, 30, 81 L.Ed. 893, 907 (1936).

In following that position, this Court in a subsequent opinion further stated:

"* * * the law is settled that 'However inclusive may be the general language of a statute, it "will not be held to apply to a matter specifically dealt with in another part of the same enactment. * * * Specific terms prevail over the general in the same or another statute. * * *" [Citations.]' "

Fourco Glass Co. v. Transmirra Prod. Corp., 353 U.S. 222, 229-230, 1 L.Ed.2d 786, 790-791 (1957).

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[1]It will be noted that both sections of the Fourteenth Amendment were enacted on the same date, July 28, 1868.

A general provision of a statute or constitution affects those cases within its general language. However, a special provision must prevail regarding its subject matter since it constitutes a limitation of the general grant.[2]

It must therefore be concluded that the special provisions of Section Two of the Fourteenth Amendment allowing for the denial of the right to vote limits the scope of the general provision of Section One of the Fourteenth Amendment, the equal protection clause.[3]

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[2]See authorities collected in 16 Am.Jur.2d, Constitutional Law, Section 69, page 247; and 50 Am.Jur., Statutes, Section 367, page 371.

[3]In *United States v. Reese*, 92 U.S. 214, 28 L. Ed. 563, the court in a Note on page 563 and 564, stated:

"Women are not entitled to vote by virtue of the Fourteenth Amendment to the Constitution of the United States. *Van Valkenburgh v. Brown*, 43 Cal., 43; • • •

The elective franchise is not a natural right, but rests upon the authority of law defining the qualifications of those who may exercise it. The Federal Constitution makes women citizens and capable of becoming voters; yet that provision does not execute itself, but requires legislative action to authorize them to vote; and where the Legislature has only enacted that male citizens may vote, women have no right to vote. • • •

The Fifteenth Amendment takes away the authority of the States to discriminate, so far as the right to vote is concerned, against citizens of the United States on account of either race, color or previous condition of servitude, and colored persons equally with whites are citizens of the United States. • • •

But the power of the States upon all other grounds, including that of sex remains intact. • • •

It does not, however, confer the right of suffrage on anyone. • • •

It does not invest citizens of the United States with a new right within the protecting power of Congress. • • •

It does not include persons who have merely declared their intentions to become citizens. • • •

The Fifteenth Amendment leaves to the States, as before, the regulation of suffrage and of the qualification of electors within their limits, with the single restriction that they shall not make color or race or previous condition of servitude, a reason of discrimination. • • • (Citations omitted.)"

II. STATISTICS PROVE THAT OVER SIXTY PER CENT OF THE APPLICATIONS FOR REHABILITATION PARDONS ARE GRANTED.

Respondents attempt to convince the Court that, because only 0.82 per cent of the persons released from state prison from 1968 through 1971 were granted rehabilitation pardons,[4] the administrative-judicial procedure set forth in the California Penal Code is unconstitutional.

Petitioner agrees that, from 1968 through 1971, 34,262 persons were released from state prison and that only 282 rehabilitation pardons were granted. But the number of pardons granted must be taken

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In the Court's opinion in *United States v. Reese*, supra, page 564, the Court stated:

> "The Fifteenth Amendment does not confer the right of suffrage upon anyone. It prevents the States, or the United States, however, from giving preference, in this particular, to one citizen of the United States over another, on account of race, color or previous condition of servitude. Before its adoption, this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race, etc., as it was on account of age, property or education. Now it is not. If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be. Previous to this Amendment, there was no constitutional guaranty against this discrimination; now there is."

Also see the discussion in dissenting opinion of Mr. Justice Hunt, id., page 575, on the adoption of the Thirteenth, Fourteenth and Fifteenth Amendments.

(See *James v. Bowman*, 190 U.S. 124; *United States v. Cruikshank*, 92 U.S. 542; *United States v. Anthony*, 24 Fed. Case No. 14,459, p. 829 (C.C. N.D. N.Y. 1873); *Stone v. Smith*, 34 N.E. 521.)

It is submitted, that had the Fourteenth Amendment in section one intended that all persons were entitled to the right to vote, there should have been no reason for the passage of the Fifteenth, Nineteenth or Twenty-sixth Amendments. (See *Van Valkenburg v. Brown*, 43 Cal. 43, 52-53.)

[4]See Brief for Respondents at pages 26-27.

in the same context as the number of applications. What respondent failed to advise the Court is that there were only 450 applications for such pardons.[5] This means that actually 62.66 per cent of those who applied for a rehabilitation pardon received such a pardon.

III. SECTION 350 OF THE CALIFORNIA ELECTIONS CODE PROVIDES ADEQUATE RELIEF WHERE THE COUNTY CLERK FAILS TO FOLLOW THE CONCLUSIONS REACHED IN OTSUKA v. HITE, 64 C.2d 596 (1966).

California Elections Code, Section 350, provides for a judicial proceeding to review a refusal to register an ex-felon because the crime in question is infamous.

The argument set forth in the amicus curiae brief of the American Civil Liberties Union of Southern California speaks of due process requiring an administrative hearing (see Brief, pages 11-14) and that judicial review under Section 350 of the California Elections Code is no substitute therefor. But the authorities cited in support thereof apply to cases where the governmental agency withdraws a "previously conferred benefit," interest, or right. (See, *e.g., Goldberg v. Kelly,* 397 U.S. 254 (1970).) This is not the situation presently at bench.

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[5]We have been advised by the State of California Department of Justice, Bureau of Identification, that in 1968 there were 106 applications for rehabilitation pardons; 1969 had 96 applications; 1970 had 135 applications; and 1971 had 113 applications. When an application for rehabilitation is filed, the Department of Justice is notified. (See Sections 4852.14 and 4852.17, California Penal Code.)

The current case focuses upon persons whose terms of incarceration and parole have expired and who now seek the restoration of the franchise. The withdrawal of a "previously conferred benefit" by a governmental body is not involved, as the franchise had been lost at the time of pronouncement of judgment and the rendering of sentence by the trial court.

Petitioner contends it is not essential that a prior administrative hearing take place. Section 350 of the California Elections Code provides for a judicial tribunal before which an objection to the county clerk's decision may be raised and considered. An administrative determination from which recourse may be had to the courts is not violative of due process. (See *Boddie v. Connecticut*, 401 U.S. 371 (1971); *Bowles v. Willingham*, 321 U.S. 503 (1944); *Anderson National Bank v. Luckett*, 321 U.S. 233, 246-247 (1944).)

IV. FINCHER v. SCOTT, 352 F.Supp. 117 (M.D. N.C. 1972), AFF'D, 411 U.S. 961 (1973), CLEARLY APPLIES TO PERSONS CONVICTED OF INFAMOUS CRIMES THAT ARE NOT INCARCERATED.

Respondents in their brief (see page 38, footnote 36) and the American Bar Association in its amicus curiae brief (see page 21) assert that *Fincher* dealt only with the right to vote of a person that is incarcerated for the commission of a felony and therefore is inapplicable to the case at bench. Said conclusion is in error.

A stipulation filed in the United States District Court for the Middle District of North Carolina and signed by Norman B. Smith, counsel for *Fincher,* and Henry E. Poole, counsel for *Scott,* page 2, paragraph number 5, states as follows:

> "5. In September, 1966, plaintiff was convicted of forgery of a check, and he received a sentence of four to six years imprisonment in the Superior Court of Anson County, North Carolina. Plaintiff completed the service of this sentence on March 27, 1970. Plaintiff did not petition for, and has not had, his citizenship restored."

Although *Fincher* was also in jail serving a misdemeanor sentence for nonconnected crimes,[6] the Board of Elections specified in its letter denying registration that one of the bases for the denial was N.C. G.S. 163-55(3). (See Exhibit A to the hereinabove referred to stipulation.)[7]

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[6]See page 2, paragraph 6, of the hereinbefore referred to stipulation which reads as follows:

> "At the present time plaintiff is serving misdemeanor sentences for escape, temporary automobile larceny, driving under the influence of intoxicating liquor, driving without valid operator's permit, and issuing worthless check. • • •"

[7]"Mr. Fred William Fincher, P. O. Box 268, Wagram, North Carolina 28396

"Dear Mr. Fincher:

"This is to notify you that your application for voter registration has been denied by the Scotland County Board of Elections. The decision was based upon the following Election Laws of the North Carolina General Statutes:

> "G. S. 163-55 (3.) Persons who have been convicted, or who have confessed their guilt in open court, upon indictment, of any crime the punishment for which is now or may hereafter be imprisonment in the State's Prison, unless he shall have had his rights of citizenship restored in the manner prescribed by law. • • •"

It is therefore very clear that the denial of the right to vote to *Fincher* was based upon his 1966 conviction for forgery, wherein he received four to six years in state prison, and that his rights of citizenship had not properly been restored.

Respectfully submitted,

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Dated: January 8, 1974.